

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CITAK & CITAK, DONALD CITAK and
BURTON CITAK,

Plaintiffs,

Civil Action No. 07 CIV 5459 (WHP)

- against -

THE ST. PAUL TRAVELERS COMPANIES,
INC., a/k/a ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,

Defendant.

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**DECLARATION
IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND
IN SUPPORT OF PLAINTIFFS' CROSS-MOTION TO AMEND COMPLAINT**

1. BURTON CITAK, an attorney duly licensed to practice law before the courts in the State of New York and admitted to the Bar of the District Court for the Southern District of New York, subscribes and declares under penalty of perjury that the following is true and correct, pursuant to 28 U.S.C. § 1746.
2. I am one of the Plaintiffs in the above-captioned action. As such, I am fully familiar with the facts and circumstances of this case. I submit this Declaration in opposition to Defendant's motion to dismiss Plaintiffs' complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and in support of Plaintiffs' cross-motion to amend Plaintiffs' Amended Complaint herein pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure.
3. There is no merit at all to Defendant's contention that Plaintiffs "knew" that we were the subject of Stuart E. Marton's Statement to the Departmental Disciplinary Committee,

Supreme Court, Appellate Division, First Department (hereinafter the “Martons’ DDC Statement”) when we filed our application for insurance coverage on January 20, 2006.

4. I signed and mailed Plaintiffs’ insurance application to Defendant on January 20, 2006. See Exhibit “I” – Amended Complaint (specifically Exhibit 1 annexed thereto).
5. As of that date, our firm had not received any notice of the Martons’ DDC Statement. We did not receive the Martons’ DDC Statement until on or about January 27, 2006. See Declaration of Donald L. Citak ¶¶5-6 and Exhibit “II” – Proposed Amended Complaint (specifically Exhibit 2A annexed thereto).
6. Therefore, when I signed and mailed Plaintiffs’ insurance application to Defendant on January 20, 2006, Plaintiffs were completely unaware that the Martons’ DDC Statement existed. Thus, Plaintiffs’ response set forth to question number 35 on that application that our firm had not been “the subject of a disciplinary complaint” was completely and entirely accurate.

Dated: New York, NY
February 28, 2008



Burton Citak